

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MEMORANDUM AND ORDER

This *pro se* prisoner's civil rights action was dismissed on motion of the defendants on March 3, 2014. Plaintiff filed a late notice of appeal on April 28, 2014. In the notice of appeal, plaintiff claimed that he did not timely receive the order of dismissal because of his transfer between detention facilities. He claims he only learned of the dismissal on April 23, 2014, after contacting the Court concerning the status of his case, and he asks the Court under those circumstances to entertain his notice of appeal. The Sixth Circuit has remanded the case to this Court for the limited purpose of determining whether the notice of appeal should be treated as a Rule 4(a)(5) motion for an extension of time and, if so, for a ruling on the motion.

Rule 4(a)(5) of the Federal Rules of Appellate Procedure allows a district court to extend the time to file a notice of appeal provided the motion for extension of time is filed no later than 30 days after the deadline for filing the notice of appeal has expired and the moving party "shows excusable neglect or good cause." Under the

circumstances, the Court finds that plaintiff's notice of appeal should also be treated as a Rule 4(a)(5) motion for extension of time to file the notice of appeal. The motion was filed less than 30 days after the time for filing a notice of appeal had expired. In addition, plaintiff has shown good cause and excusable neglect to excuse his late filing. Accordingly, the motion for extension of time is **GRANTED**. The Court will consider plaintiff's original notice of appeal as being timely filed.

E N T E R :

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE